

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MELISSA ANN BAXTER
a.k.a. MELISSA ANN ASMUSSEN
921 Yorkshire Drive
Los Altos, CA 94024

Registered Nurse License No. 328088
Public Health Nurse Certificate No. 32602
Nurse Anesthetist Certificate No. 1975

Respondent.

Case No. 2006-253

OAH No. 2006120330

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 5, 2007.
It is so ORDERED October 5, 2007.



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 LESLIE E. BRAST, State Bar No. 203296
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5548
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **MELISSA ANN BAXTER**
13 **a.k.a. MELISSA ANN ASMUSSEN**
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14 Los Altos, CA 94024

15 Registered Nurse License No. 328088
Public Health Nurse Certificate No. 32602
16 Nurse Anesthetist Certificate No. 1975

17 Respondent.

Case No. 2006-253

OAH No. 2006120330

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. Ruth Ann Terry, M.P.H, R.N. (Complainant), is the Executive Officer of
23 the Board of Registered Nursing (Board), Department of Consumer Affairs. She brought this
24 action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr.,
25 Attorney General of the State of California, by Leslie E. Brast, Deputy Attorney General.

26 2. Respondent Melissa Ann Baxter, also known as Melissa Ann Asmussen
27 (Respondent), is representing herself in this proceeding and has chosen not to exercise her right
28 to be represented by counsel.

1 **Registered Nurse License**

2 3. On or about March 31, 1981, the Board of Registered Nursing issued
3 Registered Nurse License No. 328088 to Respondent. The license was in full force and effect at
4 all times relevant to the charges brought in Accusation No. 2006-253 and will expire on August
5 31, 2008, unless renewed.

6 **Public Health Nurse Certificate**

7 4. On or about June 11, 1982, the Board of Registered Nursing issued Public
8 Health Nurse Certificate No. 32602 to Respondent. The certificate was in full force and effect at
9 all times relevant to the charges brought in Accusation No. 2006-253 and will expire on August
10 31, 2008, unless renewed.

11 **Nurse Anesthetist Certificate**

12 5. On or about May 10, 1993, the Board of Registered Nursing issued Nurse
13 Anesthetist Certificate No. 1975 to Respondent. The certificate was in full force and effect at all
14 times relevant to the charges brought in Accusation No. 2006-253 and will expire on August 31,
15 2008, unless renewed.

16 **JURISDICTION**

17 6. Accusation No. 2006-253 was filed before the Board on June 6, 2006 and
18 is currently pending against Respondent. The Accusation and all other statutorily required
19 documents were properly served on Respondent on June 8, 2006. Respondent timely filed her
20 Notice of Defense contesting the Accusation. A copy of Accusation No. 2006-253 is attached as
21 **Exhibit A** and incorporated herein by reference.

22 **ADVISEMENT AND WAIVERS**

23 7. Respondent has carefully read and understands the charges and allegations
24 in Accusation No. 2006-253. Respondent has also carefully read and fully understands the
25 effects of this Stipulated Settlement and Disciplinary Order.

26 8. Respondent is fully aware of her legal rights in this matter, including the
27 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
28

1 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
2 the right to present evidence and to testify on her own behalf; the right to the issuance of
3 subpoenas to compel the attendance of witnesses and the production of documents; the right to
4 reconsideration and court review of an adverse decision; and all other rights accorded by the
5 California Administrative Procedure Act and other applicable laws.

6 9. Respondent voluntarily, knowingly, and intelligently waives and gives up
7 each and every right set forth above.

8 CULPABILITY

9 10. Respondent admits the truth of the Second and Fourth Causes for
10 Discipline as alleged in Accusation No. 2006-253. She does not contest the First and Third
11 Causes for Discipline alleged in Accusation No. 2006-253.

12 11. Respondent agrees that her Registered Nurse License and Certificates are
13 subject to discipline and she agrees to be bound by the Board's imposition of discipline as set
14 forth in the Disciplinary Order below.

15 RESERVATION

16 12. The admissions made by Respondent herein are only for the purposes of
17 this proceeding, or any other proceedings in which the Board or other professional licensing
18 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

19 CIRCUMSTANCES IN MITIGATION

20 13. Respondent has been licensed in California as a Registered Nurse since
21 1981 and as a Certified Registered Nurse Anesthetist (CRNA) since 1993 without prior
22 discipline. She volitionally completed an intensive six-month outpatient treatment program for
23 chemical dependency in 2005; random urine drug screens have since been negative. As a CRNA,
24 Respondent currently holds privileges as a member in good standing of the medical staff at Eden
25 Hospital in Castro Valley, California and at Alameda County Medical Center in Oakland,
26 California.

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1 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
2 A full and detailed account of any and all violations of law shall be reported by Respondent to
3 the Board in writing within 72 hours of occurrence. To permit monitoring of compliance with
4 this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within
5 45 days of the effective date of the decision, unless previously submitted as part of the licensure
6 application process.

7 **Criminal Court Orders:** If Respondent is under criminal court orders, including
8 probation or parole, and the order is violated, this shall be deemed a violation of these probation
9 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

10 2. **Comply with the Board's Probation Program.** Respondent shall fully
11 comply with the conditions of the Probation Program established by the Board and cooperate
12 with representatives of the Board in its monitoring and investigation of the Respondent's
13 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
14 within no more than 15 days of any address change and shall at all times maintain an active,
15 current license status with the Board, including during any period of suspension.

16 Upon successful completion of probation, Respondent's license shall be fully
17 restored.

18 3. **Report in Person.** Respondent, during the period of probation, shall
19 appear in person at interviews/meetings as directed by the Board or its designated
20 representatives.

21 4. **Residency, Practice, or Licensure Outside of State.** Periods of
22 residency or practice as a registered nurse outside of California shall not apply toward a reduction
23 of this probation time period. Respondent's probation is tolled, if and when she resides outside
24 of California. Respondent must provide written notice to the Board within 15 days of any change
25 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
26 returning to practice in this state.

27 Respondent shall provide a list of all states and territories where she has ever been
28 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further

1 provide information regarding the status of each license and any changes in such license status
2 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
3 new nursing license during the term of probation.

4 **5. Submit Written Reports.** Respondent, during the period of probation,
5 shall submit or cause to be submitted such written reports/declarations and verification of actions
6 under penalty of perjury, as required by the Board. These reports/declarations shall contain
7 statements relative to Respondent's compliance with all the conditions of the Board's Probation
8 Program. Respondent shall immediately execute all release of information forms as may be
9 required by the Board or its representatives.

10 Respondent shall provide a copy of this Decision to the nursing regulatory agency
11 in every state and territory in which she has a registered nurse license.

12 **6. Function as a Registered Nurse.** Respondent, during the period of
13 probation, shall engage in the practice of registered nursing in California for a minimum of 24
14 hours per week for six consecutive months or as determined by the Board.

15 For purposes of compliance with the section, "engage in the practice of registered
16 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
17 work in any non-direct patient care position that requires licensure as a registered nurse.

18 The Board may require that advanced practice nurses engage in advanced practice
19 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
20 Board.

21 If Respondent has not complied with this condition during the probationary term,
22 and Respondent has presented sufficient documentation of her good faith efforts to comply with
23 this condition, and if no other conditions have been violated, the Board, in its discretion, may
24 grant an extension of Respondent's probation period up to one year without further hearing in
25 order to comply with this condition. During the one year extension, all original conditions of
26 probation shall apply.

27 **7. Employment Approval and Reporting Requirements.** Respondent
28 shall obtain prior approval from the Board before commencing or continuing any employment,

1 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
2 performance evaluations and other employment related reports as a registered nurse upon request
3 of the Board.

4 Respondent shall provide a copy of this Decision to her employer and immediate
5 supervisors prior to commencement of any nursing or other health care related employment.

6 In addition to the above, Respondent shall notify the Board in writing within 72
7 hours after she obtains any nursing or other health care related employment. Respondent shall
8 notify the Board in writing within 72 hours after she is terminated or separated, regardless of
9 cause, from any nursing, or other health care related employment with a full explanation of the
10 circumstances surrounding the termination or separation.

11 8. **Supervision.** Respondent shall obtain prior approval from the Board
12 regarding Respondent's level of supervision and/or collaboration before commencing or
13 continuing any employment as a registered nurse, or education and training that includes patient
14 care.

15 Respondent shall practice only under the direct supervision of a registered nurse
16 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
17 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
18 are approved.

19 Respondent's level of supervision and/or collaboration may include, but is not
20 limited to the following:

21 (a) Maximum - The individual providing supervision and/or collaboration is
22 present in the patient care area or in any other work setting at all times.

23 (b) Moderate - The individual providing supervision and/or collaboration is in
24 the patient care unit or in any other work setting at least half the hours Respondent works.

25 (c) Minimum - The individual providing supervision and/or collaboration has
26 person-to-person communication with Respondent at least twice during each shift worked.

27 (d) Home Health Care - If Respondent is approved to work in the home health
28 care setting, the individual providing supervision and/or collaboration shall have person-to-

1 person communication with Respondent as required by the Board each work day. Respondent
2 shall maintain telephone or other telecommunication contact with the individual providing
3 supervision and/or collaboration as required by the Board during each work day. The individual
4 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
5 site visits to patients' homes visited by Respondent with or without Respondent present.

6 9. **Employment Limitations.** Respondent shall not work for a nurse's
7 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
8 traveling nurse, or for an in-house nursing pool.

9 Respondent shall not work for a licensed home health agency as a visiting nurse
10 unless the registered nursing supervision and other protections for home visits have been
11 approved by the Board. Respondent shall not work in any other registered nursing occupation
12 where home visits are required.

13 Respondent shall not work in any health care setting as a supervisor of registered
14 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
15 nurses and/or unlicensed assistive personnel on a case-by-case basis.

16 Respondent shall not work as a faculty member in an approved school of nursing
17 or as an instructor in a Board approved continuing education program.

18 Respondent shall work only on a regularly assigned, identified and predetermined
19 worksite(s) and shall not work in a float capacity.

20 If Respondent is working or intends to work in excess of 40 hours per week, the
21 Board may request documentation to determine whether there should be restrictions on the hours
22 of work.

23 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
24 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
25 than six months prior to the end of her probationary term.

26 Respondent shall obtain prior approval from the Board before enrolling in the
27 course(s). Respondent shall submit to the Board the original transcripts or certificates of
28 completion for the above required course(s). The Board shall return the original documents to

Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$5,200.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

12. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

13. **License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

1 Surrender of Respondent's license shall be considered a disciplinary action and
2 shall become a part of Respondent's license history with the Board. A registered nurse whose
3 license has been surrendered may petition the Board for reinstatement no sooner than the
4 following minimum periods from the effective date of the disciplinary decision:

5 (1) Two years for reinstatement of a license that was surrendered for any
6 reason other than a mental or physical illness; or

7 (2) One year for a license surrendered for a mental or physical illness.

8 14. **Physical Examination.** Within 45 days of the effective date of this
9 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or
10 physician assistant, who is approved by the Board before the assessment is performed, submit an
11 assessment of the Respondent's physical condition and capability to perform the duties of a
12 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
13 medically determined, a recommended treatment program will be instituted and followed by the
14 Respondent with the physician, nurse practitioner, or physician assistant providing written
15 reports to the Board on forms provided by the Board.

16 If Respondent is determined to be unable to practice safely as a registered nurse,
17 the licensed physician, nurse practitioner, or physician assistant making this determination shall
18 immediately notify the Board and Respondent by telephone, and the Board shall request that the
19 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
20 shall immediately cease practice and shall not resume practice until notified by the Board.
21 During this period of suspension, Respondent shall not engage in any practice for which a license
22 issued by the Board is required until the Board has notified Respondent that a medical
23 determination permits Respondent to resume practice. This period of suspension will not apply
24 to the reduction of this probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within
26 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
27 practice until notified by the Board. This period of suspension will not apply to the reduction of
28 this probationary time period. The Board may waive or postpone this suspension only if

1 significant, documented evidence of mitigation is provided. Such evidence must establish good
2 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
3 provided. Only one such waiver or extension may be permitted.

4 15. **Participate in Treatment/Rehabilitation Program for Chemical**
5 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
6 period or shall have successfully completed prior to commencement of probation a Board-
7 approved treatment/rehabilitation program of at least six months duration. As required, reports
8 shall be submitted by the program on forms provided by the Board. If Respondent has not
9 completed a Board-approved treatment/rehabilitation program prior to commencement of
10 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
11 a program. If a program is not successfully completed within the first nine months of probation,
12 the Board shall consider Respondent in violation of probation.

13 Based on Board recommendation, each week Respondent shall be required to
14 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
15 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
16 by the Board. If a nurse support group is not available, an additional 12-step meeting or
17 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
18 such attendance to the Board during the entire period of probation. Respondent shall continue
19 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
20 mental health examiner and/or other ongoing recovery groups.

21 16. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
22 shall completely abstain from the possession, injection or consumption by any route of all
23 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
24 the same are ordered by a health care professional legally authorized to do so as part of
25 documented medical treatment. Respondent shall have sent to the Board, in writing and within
26 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
27 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
28 medication will no longer be required, and the effect on the recovery plan, if appropriate.

1 Respondent shall identify for the Board a single physician, nurse practitioner or
2 physician assistant who shall be aware of Respondent's history of substance abuse and will
3 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
4 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
5 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
6 condition. If any substances considered addictive have been prescribed, the report shall identify a
7 program for the time limited use of any such substances.

8 The Board may require the single coordinating physician, nurse practitioner, or
9 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
10 addictive medicine.

11 **17. Submit to Tests and Samples.** Respondent, at her expense, shall
12 participate in a random, biological fluid testing or a drug screening program which the Board
13 approves. The length of time and frequency will be subject to approval by the Board.
14 Respondent is responsible for keeping the Board informed of Respondent's current telephone
15 number at all times. Respondent shall also ensure that messages may be left at the telephone
16 number when she is not available and ensure that reports are submitted directly by the testing
17 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
18 to the Board by the program and Respondent shall be considered in violation of probation.

19 In addition, Respondent, at any time during the period of probation, shall fully
20 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
21 tests and samples as the Board or its representatives may require for the detection of alcohol,
22 narcotics, hypnotics, dangerous drugs, or other controlled substances.

23 If Respondent has a positive drug screen for any substance not legally authorized
24 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
25 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
26 from practice pending the final decision on the petition to revoke probation or the accusation.
27 This period of suspension will not apply to the reduction of this probationary time period.

28 //

1 If Respondent fails to participate in a random, biological fluid testing or drug
2 screening program within the specified time frame, Respondent shall immediately cease practice
3 and shall not resume practice until notified by the Board. After taking into account documented
4 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
5 Board may suspend Respondent from practice pending the final decision on the petition to
6 revoke probation or the accusation. This period of suspension will not apply to the reduction of
7 this probationary time period.

8 18. **Mental Health Examination.** Respondent shall, within 45 days of the
9 effective date of this Decision, have a mental health examination including psychological testing
10 as appropriate to determine her capability to perform the duties of a registered nurse. The
11 examination will be performed by a psychiatrist, psychologist or other licensed mental health
12 practitioner approved by the Board. The examining mental health practitioner will submit a
13 written report of that assessment and recommendations to the Board. All costs are the
14 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
15 result of the mental health examination will be instituted and followed by Respondent.

16 If Respondent is determined to be unable to practice safely as a registered nurse,
17 the licensed mental health care practitioner making this determination shall immediately notify
18 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
19 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
20 practice and may not resume practice until notified by the Board. During this period of
21 suspension, Respondent shall not engage in any practice for which a license issued by the Board
22 is required, until the Board has notified Respondent that a mental health determination permits
23 Respondent to resume practice. This period of suspension will not apply to the reduction of this
24 probationary time period.

25 If Respondent fails to have the above assessment submitted to the Board within
26 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
27 practice until notified by the Board. This period of suspension will not apply to the reduction of
28 this probationary time period. The Board may waive or postpone this suspension only if

significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

19. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse License, and Public Health Nurse Certificate, and Nurse Anesthetist Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 5-30-04

Paulen Ann Bond

MELISSA ANN BAXTER,
Respondent

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1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
4 Affairs.

5 DATED: 7/9/07

6 EDMUND G. BROWN JR., Attorney General
7 of the State of California

8 FRANK H. PACOE
9 Supervising Deputy Attorney General

10 

11 LESLIE E. BRAST
12 Deputy Attorney General

13 Attorneys for Complainant

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
DIVISION OF PROFESSIONAL REGULATION
1000 CALIFORNIA STREET, SUITE 100
SAN FRANCISCO, CA 94104
415.774.2000

Exhibit A
Accusation No. 2006-253

1 BILL LOCKYER, Attorney General
of the State of California
2 ASPASIA PAPA VASSILIOU, State Bar No. 196360
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5547
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2006-253

12 **MELISSA ANN BAXTER,**
13 **a.k.a. MELISSA ANN ASMUSSEN**
921 Yorkshire Drive
Los Altos, CA 94024

ACCUSATION

14 Registered Nurse License No. 328088
15 Nurse Anesthetist Certificate No. 1975
16 Public Health Nurse Certificate No. 32602

Respondent.

18 Complainant alleges:

19
20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
23 ("Board"), Department of Consumer Affairs.

24 Registered Nurse License No. 328088

25 2. On or about March 31, 1981, the Board issued Registered Nurse License
26 Number 328088 to Melissa Ann Baxter, also known as Melissa Ann Asmussen ("Respondent").
27 Respondent's registered nurse license was in full force and effect at all times relevant to the
28 charges brought herein and will expire on August 31, 2006, unless renewed.

1 **Nurse Anesthetist Certificate No. 1975**

2 3. On or about May 10, 1993, the Board issued Nurse Anesthetist Certificate
3 Number 1975 to Respondent. Respondent's nurse anesthetist certificate was in full force and
4 effect at all times relevant to the charges brought herein and will expire on August 31, 2006,
5 unless renewed.

6 **Public Health Nurse Certificate No. 32602**

7 4. On or about June 11, 1982, the Board issued Public Health Nurse
8 Certificate Number 32602 to Respondent. Respondent's public health nurse certificate was in
9 full force and effect at all times relevant to the charges brought herein and will expire on August
10 31, 2006, unless renewed.

11
12 **STATUTORY PROVISIONS**

13 5. Business and Professions Code ("Code") section 2750 provides, in
14 pertinent part, that the Board may discipline any licensee, including a licensee holding a
15 temporary or an inactive license, for any reason provided in Article 3 (commencing with section
16 2750) of the Nursing Practice Act.

17 6. Code section 2764 provides, in pertinent part, that the expiration of a
18 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
19 against the licensee or to render a decision imposing discipline on the license. Under Code
20 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
21 years after the expiration.

22 7. Code section 2761, subdivision (a), states, in pertinent part, that the Board
23 may take disciplinary action against a certified or licensed nurse or deny an application for a
24 certificate or license for unprofessional conduct.

25 8. Code section 2762 states, in pertinent part:

26 In addition to other acts constituting unprofessional conduct within the
27 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct
 for a person licensed under this chapter to do any of the following:

28 (a) Obtain or possess in violation of law, or prescribe, or except as

1 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
2 himself or herself, or furnish or administer to another, any controlled substance as
3 defined in Division 10 (commencing with Section 11000) of the Health and Safety
4 Code or any dangerous drug or dangerous device as defined in Section 4022.

5 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
6 unintelligible entries in any hospital, patient, or other record pertaining to the
7 substances described in subdivision (a) of this section.

8 9. Health and Safety Code section 11173, subdivision (a), states, in pertinent
9 part, that no person shall obtain or attempt to obtain controlled substances, or procure or attempt
10 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
11 misrepresentation, or subterfuge.

12 COST RECOVERY

13 10. Code section 125.3 provides, in pertinent part, that the Board may request
14 the administrative law judge to direct a licensee found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case.

17 CONTROLLED SUBSTANCE AT ISSUE

18 11. "Demerol®", a brand of meperidine hydrochloride, is a Schedule II
19 controlled substance as designated by Health and Safety Code section 11055, subdivision (c)(17).
20

21 FIRST CAUSE FOR DISCIPLINE

22 (Diversification of Controlled Substances)

23 Berman Skin Institute

24 12. Respondent is subject to disciplinary action pursuant to Code section
25 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
26 2762, subdivision (a), in that in or about December 2002, while employed and on duty as a nurse
27 anesthetist at Berman Skin Institute, Palo Alto, California, Respondent obtained the controlled
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1 substance Demerol® by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and
2 Safety Code section 11173, subdivision (a), in cases involving six patients, as follows:

3 **Patient No. 1:**

4 a. On or about December 9, 2002, Respondent obtained an unknown quantity
5 of Demerol® by falsifying the Medication Log and Patient No. 1's anesthesia record. Respondent
6 signed out on the Medication Log a total of 6 ml (300 mg) of Demerol® from a multi-dose
7 container for Patient No.1 and documented that she administered the medication to the patient
8 in six doses, as follows: 50 mg Demerol® at 0745, 0800, 0815, 0830, 0900, and 0930 hours (a
9 total of 300 mg Demerol® during a period of less than two hours), during the patient's
10 liposuction procedure. In fact, Respondent did not administer any Demerol® to the patient
11 during the procedure.¹

12 **Patient No. 2:**

13 b. On or about December 10, 2002, Respondent obtained an unknown
14 quantity of Demerol® by falsifying the Medication Log and Patient No. 2's anesthesia record.
15 Respondent signed out on the Medication Log a total of 7 ml (350 mg) of Demerol® from a
16 multi-dose container for Patient No. 2 and documented that she administered the medication to
17 the patient in 7 doses, as follows: 50 mg Demerol® at 0830, 0900, 0915, 0930, 0945, 1015, and
18 1030 hours (a total of 350 mg Demerol® during a period of two hours), during the patient's
19 liposuction procedure. In fact, Respondent did not administer any Demerol® to the patient
20 during the procedure.

21 **Patient No. 3:**

22 c. On or about December 11, 2002, Respondent obtained an unknown
23 quantity of Demerol® by falsifying the Medication Log and Patient No. 3's anesthesia record.
24 Respondent signed out on the Medication Log a total of 7 ml (350 mg) Demerol® from a multi-
25 dose container for Patient No. 3 and documented that she administered the medication to the
26

27 1. Neither the doctor nor physician assistant observed Respondent administer Demerol® to any of the
28 patients described here. In addition, at the conclusion of the procedures, the patients did not behave as if they had
been administered Demerol®.

1 patient in seven doses as follows: 50 mg Demerol® 0800, 0815, 0845, 0900, 0915, 0945, and
2 1015 hours (a total of 350 mg Demerol® during a period of two and a quarter hours), during the
3 patient's liposuction procedure. In fact, Respondent did not administer any Demerol® to the
4 patient during the procedure.

5 **Patient No. 4:**

6 d. On or about December 11, 2002, Respondent obtained an unknown
7 quantity of Demerol® by falsifying the Medication Log and Patient No. 4's anesthesia record.
8 Respondent signed out on the Medication Log a total of 6 ml (300 mg) of Demerol® from a
9 multi-dose container for Patient No. 4 and documented that she administered the medication
10 to the patient in six doses, as follows: 50 mg Demerol® to the patient at 1200, 1230, 1245, 1300,
11 1315, and 1330 hours (a total of 300 mg Demerol® during a period of one a half hours), during
12 the patient's liposuction procedure. In fact, Respondent did not administer any Demerol® to the
13 patient during the procedure.

14 **Patient No. 6:²**

15 e. On or about December 12, 2002, Respondent obtained an unknown
16 quantity of Demerol® by falsifying the Medication Log and Patient No. 6's anesthesia record.
17 Respondent signed out on the Medication Log a total of 5 ml (250 mg) Demerol® from a multi-
18 dose container for Patient No. 6 and documented that she administered the medication to the
19 patient in five doses, as follows: 50 mg Demerol® at 0745, 0800, 0815, 0830, and 0845 hours (a
20 total of 250 mg Demerol® during a period of one hour), during the patient's surgical procedure.
21 In fact, Respondent did not administer any Demerol® to the patient during the procedure.

22 **Patient No. 7:**

23 f. On or about December 12, 2002, Respondent obtained an unknown
24 quantity of Demerol® by falsifying the Medication Log and Patient No. 7's anesthesia record.
25 Respondent signed out on the Medication Log a total of 9 ml (450 mg) of Demerol® from a
26 multi-dose container for Patient No. 7, and documented that she administered Demerol® to the
27

28 2. There is no information available about a Patient No. 5; the redacted records provided by the Berman Skin Institute are only for Patient Nos. 1-4 and 6-7.

1 patient in seven doses during the patient's liposuction procedure, as follows: 50 mg at 0845,
2 0900, 0915, 0930, 0945, 1000, and 1030 (a total of 350 mg Demerol® during a period of less
3 than two hours). In fact, Respondent did not administer any Demerol® to the patient during the
4 procedure. As for the remaining 2 ml (100 mg) of Demerol® Respondent signed out for this
5 patient, she documented that she administered 50 mg Demerol® at 1115 and 1120, following the
6 procedure, which would have brought the total dose of Demerol® allegedly administered to the
7 patient to 450 mg. However, Respondent calculated that she only administered a total of 350 mg
8 instead of 450 mg, despite the fact she had documented 9 doses of 50 mg each.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(False Entries in Anesthesia/Patient Records)**

12 **Berman Skin Institute**

13 13. Respondent is subject to disciplinary action pursuant to Code section
14 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
15 2762, subdivision (e), in that in or about December 2002, while employed and on duty as a nurse
16 anesthetist at Berman Skin Institute, Palo Alto, California, Respondent falsified, or made grossly
17 incorrect, grossly inconsistent, or unintelligible entries in anesthesia/patient records pertaining to
18 the controlled substance Demerol®, in cases involving six patients, as set forth in paragraph 12
19 above.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Diversion of Controlled Substances)**

22 **Sierra Kings District Hospital**

23 14. Respondent is subject to disciplinary action pursuant to Code section
24 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
25 2762, subdivision (a), in that in or about April 2004, while employed and on duty as a nurse
26 anesthetist at Sierra Kings District Hospital, Reedley, California, Respondent obtained the
27 controlled substance Demerol® by fraud, deceit, misrepresentation, or subterfuge, in violation of
28 Health and Safety Code section 11173, subdivision (a), in cases involving six patients, as

1 follows:

2 **Patient No. ---245:**³

3 a. On or about April 14, 2004, Respondent obtained 150 mg of Demerol® by
4 falsifying Patient No. ---245's anesthesia record. Respondent signed out on the OB Anesthesia
5 Controlled Substance Record (hereinafter "CSR") a total of 150 mg Demerol® for the patient
6 and falsely documented in the patient's anesthesia record that she administered 100 mg
7 Demerol® to the patient at 1245 hours and 50 mg Demerol® at 1315 hours (a total of 150 mg
8 Demerol® during a period of less than one hour), during the patient's repeat lower transverse
9 cesarean section.⁴ In fact, the patient did not exhibit any signs of having received 150 mg
10 Demerol® in that she was reported in the Post Anesthesia Recovery Record as being "fully
11 awake" at the time she was sent to the recovery room at 1305 hours.⁵

12 **Patient No. ---552:**

13 b. On or about April 14, 2004, Respondent obtained 200 mg of Demerol® by
14 falsifying Patient No. ---552's anesthesia record. Respondent signed out on the CSR a total of
15 200 mg Demerol® for the patient and falsely documented in the patient's anesthesia record that
16 she administered 50 mg Demerol® to the patient at 0800, 0815, 0830, and 0845 hours (a total of
17 200 mg Demerol® during a period of less than one hour), during the patient's laparoscopic tubal
18 ligations. In fact, the patient did not exhibit any signs of having received 200 mg Demerol® in
19 that she was reported in the Post Anesthesia Recovery Record as having a pain level of 3-4 at the
20 time she was taken to the recovery room at 0905 hours. Further, the patient was reported as
21 being "awake" and "alert", with a pain level of 4-5, at the time she was discharged to her room at
22 0915 hours.

23
24
25 3. To protect the Sierra Kings patients' privacy, only the last three digits of their medical record numbers are being revealed here.

26 4. Demerol® is usually not used during cesarean sections because of possible harm to the infant.

27 5. Meperidine (Demerol®) has a long elimination half-life of 3 to 5 hours. The active metabolite,
28 normeperidine, has an elimination half-life of 14 to 21 hours. Large doses of meperidine are not recommended because of the possibility of hemodynamic instability.

Patient No. ---807:

c. On or about April 14, 2004, Respondent obtained 150 mg of Demerol® by falsifying Patient No.---807's anesthesia record. Respondent signed out on the CSR a total of 150 mg Demerol® for the patient and falsely documented in the patient's anesthesia record that she administered 50 mg Demerol® to the patient at 1915 hours and 100 mg Demerol® at 1930 hours (a total of 150 mg Demerol® during a period of 15 minutes), during the patient's lower transverse cesarean section. In fact, the patient was scheduled to receive an epidural or spinal anesthesia for pain management during delivery as documented in the patient's medical records and there was no order for Demerol® in the Labor & Delivery Standing Orders.⁶

Patient No. ---958:

d. On or about April 15, 2004, Respondent obtained 100 mg of Demerol® by falsifying Patient No. ---958's anesthesia record. Respondent signed out on the CSR a total of 100 mg Demerol® for the patient and falsely documented in the patient's anesthesia record that she administered 50 mg Demerol® to the patient at 1300 hours and again at 1315 hours (a total of 100 mg Demerol® during a period of 15 minutes). In fact, the patient was scheduled to receive an epidural for pain management during delivery as documented in the Labor & Delivery Standing Orders and there was no order for Demerol® in the Standing Orders. Further, Respondent administered the epidural to the patient (Respondent completed the epidural at 1315 hours as documented in the Labor Flowsheet).⁷

Patient No. ---085:

e. On or about April 17, 2004, Respondent obtained 200 mg of Demerol® by falsifying Patient No.---085's anesthesia record. Respondent signed out on the CSR a total of 200 mg Demerol® for the patient and falsely documented in the patient's anesthesia record that she administered 100 mg Demerol® to the patient at 1530 hours and again at 1600 hours (a total

6. Further, the patient did not exhibit any signs of having received 150 mg Demerol®, as the patient was reported in the Post Anesthesia Recovery Record as being "easily arousable" at the time she was taken to the recovery room.

7. Moreover, the fetal monitor did not show any of changes or negative reactions in the infant that would have been expected had the Demerol® in fact been administered as documented by Respondent.

1 of 200 mg Demerol® during a period of less than one hour), during the patient's lower
2 transverse cesarean section. In fact, the patient did not exhibit any signs of having received 200
3 mg Demerol® and was reported in the Post Anesthesia Recovery Record as being "fully awake"
4 at the time she was discharged to her room at 1700 hours.

5 **Patient No. ---264:**

6 f. On or about April 18, 2004, Respondent obtained 200 mg of Demerol® by
7 falsifying Patient No.---264's anesthesia record. Respondent signed out on the CSR a total of
8 200 mg Demerol® for the patient and falsely documented in the patient's anesthesia record that
9 she administered 100 mg Demerol® to the patient at 0400 hours and again at 0430 (a total of 200
10 mg Demerol® during a half hour period), during the patient's D & C (dilation and curettage). In
11 fact, Emergency Room staff administered Demerol® 25 mg to the patient at 0355 hours. Further,
12 the patient did not exhibit any signs of having received 200 mg Demerol® in that she was
13 reported in the Post Anesthesia Recovery Record as being "fully awake" at the time she was
14 discharged to her room at 0525 hours.

15
16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(False Entries in Hospital/Patient Records)**

18 **Sierra Kings District Hospital**

19 15. Respondent is subject to disciplinary action pursuant to Code section
20 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
21 2762, subdivision (e), in that in or about April 2004, while employed and on duty as a nurse
22 anesthetist at Sierra Kings District Hospital, Reedley, California, Respondent falsified, or made
23 grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other
24 records pertaining to the controlled substance Demerol®, in cases involving six patients, as set
25 forth in paragraph 14 above.

26 ///

27 ///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

4 1. Revoking or suspending Registered Nurse License Number 328808, issued
5 to Melissa Ann Baxter, also known as Melissa Ann Asmussen;


6 2. Revoking or suspending Nurse Anesthetist Certificate Number 1975,
7 issued to Melissa Ann Baxter, also known as Melissa Ann Asmussen;

8 3. Revoking or suspending Public Health Nurse Certificate Number 32602,
9 issued to Melissa Ann Baxter, also known as Melissa Ann Asmussen;

10 4. Ordering Melissa Ann Baxter, also known as Melissa Ann Asmussen, to
11 pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of
12 this case, pursuant to Business and Professions Code section 125.3;

13 5. Taking such other and further action as deemed necessary and proper.

14
15 DATED: 6/6/06

16
17 
18 RUTH ANN TERRY, M.P.H., R.N.
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California

23
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25
26
27 Complainant